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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,767	10/19/2005	Zenon Lysenko	62260A	7734

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The Dow Chemical Company
Intellectual Property Section
P.O. Box 1967
Midland, MI 48641-1967

EXAMINER	
WINKLER, MELISSA A	
ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
01/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/553,767	LYSENKO ET AL.	
	Examiner	Art Unit	
	MELISSA WINKLER	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12 - 23 and 42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12 - 23 and 42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

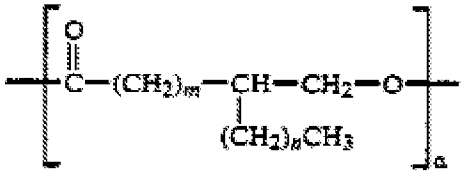
> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12 – 17, 19, 21 – 23, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,543,369 to Peerman et al.

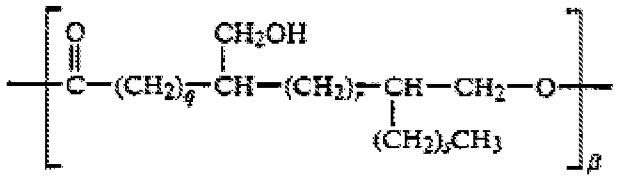
Regarding Claims 12 – 14, 16, 17. Peerman et al. teach a vegetable oil-based polyol (Column 3, Lines 14 – 57), represented by the formula:

$$R—O—A—H]_p$$

where R is a polyol residue; *p* is an integer from 2 to 6; and A, which may be the same or different, is selected from the group consisting of A_1, A_2, and A_3 were A_1 is:



and A_2 is:



where m, n, q, r, s, α, and β are integers such that m is greater than 3, n is greater than or equal to zero, and the sum of m and n is from 11 to 19, inclusive; q is greater than 3, r and s are each greater than or equal to zero, and the sum of q, r, and s is from 10 to 18, inclusive (Column 2, Line - Column 3, Line 10).

Peerman et al. does not teach the residue of the polyol further comprises a structure corresponding to A3 in the instant claims. However, homologs - compounds which differ regularly by the successive addition of the same chemical groups – are generally of sufficiently close structure similar that there is a presumed expectation that such compounds possess similar properties. A3 differs from A_2 disclosed by Peerman et al. only in that an additional $–CHCH_2OH—(CH_2)_r$ group is added onto the existing $–CHCH_2OH—(CH_2)_r$ group in the structure. The presence of an additional $–CHCH_2OH—(CH_2)_r$ group in A_2 disclosed by Peerman would provide advantages such increasing the polyols reactivity with isocyanate.

Regarding Claim 19. Peerman et al. teach the polyol of Claim 12 wherein the initiator may be neopentylglycol (Column 5, Lines 17 – 31).

Regarding Claims 21 – 23. Peerman et al. teach the polyol of Claim 12 wherein the polyols in the Examples have hydroxyl equivalent weights ranging from 157 to 602 (Column 11, Line 35 - Column 13, Line 50).

Regarding Claim 42. Peerman et al. teach the polyol of Claim 12 wherein the polyol is reacted with a polyisocyanate to form a polyurethane (Column 8, Line 53 – Column 9, Line 52).

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by US 4,543,369 to Peerman et al., as applied to Claims 12, 16, and 17 above, and further in view of US 4,216,344 to Rogier.

Regarding Claim 18. Peerman et al. teach the polyol of Claim 17 wherein triols disclosed in US 4,216,344 to Rogier may be used. Rogier specifically discloses the triol may be glycerol (Column 11, Lines 53 – 58).

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by US 4,543,369 to Peerman et al., as applied to Claims 12 and 19 above, and further in view of US 4,216,344 to Rogier.

Regarding Claim 20. Peerman et al. teach the polyol of Claim 19 wherein triols disclosed in US 4,216,344 to Rogier may be used. Rogier specifically discloses the triol may be glycerol (Column 11, Lines 53 – 58).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 12 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claim 3 of copending Application No. 11/665,097. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious variations upon each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments with respect to Claims 1 - 20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with regarding to the obviousness-type double patenting rejection in view of Application No. 11/665,097 have been full considered but are not persuasive. Though independent Claim 1 in Application No. 11/665,097 teaches a dispersion of polymer particles, Claim 3 teaches the dispersion comprises the polyol described in instant Claim 12. Accordingly, the subject matter of instant Claim 12 is not patentably distinct over Claim 3 of Application No. 11/665,097.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA WINKLER whose telephone number is (571)270-3305. The examiner can normally be reached on Monday - Friday 7:30AM - 5PM E.S.T..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571)272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/ MW
Supervisory Patent Examiner, Art Unit 1796 January 15, 2009